IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

Crl.Rev.Pet.No. 2032 of 2007

CRA.640/2001 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY
CC.878/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR

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REVN. PETITIONER: APPELLANT/ACCUSED:

JOSEPH GEORGE, S/O. GEORGE,
AGED 35 YEARS, AYYANKUNNU AMSOM, DESOM,
P.O. KOOMANTHODE, THALASSERY TALUK,KANNUR DISTRICT

BY ADV. SRI.R.SURENDRAN

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. K.C. THOMAS, S/O. CHACKO,
AGED 31 YEARS, RESIDING ATKAVUNKAL,
AYYANKUNNU AMSOM, DESOM, P.O. KOOMANTHODE,
THALASSERY TALUK, KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR MR. C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.2032 of 2007

DATED THIS THE 28TH DAY OF MAY 2007

ORDER

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced, as modified by the appellate court, to imprisonment till the rising of the court and to pay a compensation of Rs.2,50,000/- and in default to undergo simple imprisonment for one year. It is the case of the petitioner that the complainant in the chief examination has stated that the amount borrowed was only Rs.2,00,000/- whereas the case in the complaint is that an amount of Rs.2,50,000/- was borrowed. It is also mentioned that date of borrowal has been spoken differently by the complainant when he has testified. It is also contended that the complainant was much indebted person and that he would not be in a position to raise this much of amount to lend to the revision petitioner.

2. I find that the prosecution case is that the complainant on 10-5-1997 borrowed a sum of Rs.2,50,000/- and for the said amount issued a cheque dated 12-8-997 which when presented got dishonoured. Lawyer notice was sent demanding payment. No reply was sent. The evidence adduced in the matter consisted of the

testimony of PW1, the complainant, and Exts.P1 to P6.

3. The courts below have considered the above contentions and found that the amount mentioned by PW1 in the chief examination was clarified and rectified when he was recalled. The contention that he has mentioned the dates differently is not seen raised before the courts below. I find that being a question of fact, the above contention cannot be permitted to be raised at the revisional stage. The contention is that the complainant was indebted on the date of the alleged lending with respect to Rs.10,000/- to the Service Co-Operative Bank, Rs.30,000/- to Land Mortgage Bank, Rs.20,000/- to Angadikadavu Rural Bank and Rs.20,000/- to Payam Rural Bank. It is the case that he is only having an extent of 1 ½ acres of property. But it has been brought out that he has advanced a sum of Rs.70,000/- to one Shiny Jose and Rs.2,50,000/- to one Janardhanan in the year 1997. Even according to the accused herein, he had borrowed Rs.25,000/- in 1994 and that the blank cheque was issued. I find that just on the basis of the admission that he has to pay certain amounts to certain banks is no ground to conclude that he was not having sufficient resources to lend the alleged amount. Moreover, the accused has not adduced any evidence to rebut the statutory presumptions. In the circumstances, I find no reason to interfere in

the concurrent findings of the courts below.

All the same, considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.2,50,000/- under Section 357(3)Cr.P.C. and in default to undergo simple imprisonment for three months. The revision petitioner is granted six months time from today onwards to pay the amount. He shall appear before the Judicial First Class Magistrate, Mattannur on 28-11-2007 to receive the sentence. Non-bailable warrant pending, if any, shall be kept in abeyance. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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